B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Gabriel Technologies Corporation Gabriel Technologies, LLC.	**DEFENDANTS** Keith Robert Feilmeier Judith Elizabeth Feilmeier Richard D. Myers, Chapter 7 Trustee
ATTORNEYS (Firm Name, Address, and Telephone No.) Michael J. Whaley, Gross & Welch, P.C., L.L.O. 2120 South 72nd Street, Suite 1500 Omaha, NE 68124 (402) 392-1500	**ATTORNEYS** (If Known) Trinh P. Tran, P.O. Box 3900091, Omaha, NE 68139 (402) 884-4381 Richard D. Myers, 11404 West Dodge Road , Suite 500 , Omaha, NE 68154, (402) 492-9200
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☑ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☑ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Action to determine ownership of an asset listed in the debtors' bankruptcy schedules per 28 U.S.C. 1334; 28 U.S.C. 157(d)(2)(A) and Bank. Rule 7001.

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☑ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $
Other Relief Sought	

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Keith Robert Feilmeier and Judith Elizabeth Feilmeier	BANKRUPTCY CASE NO. 10-80147	
DISTRICT IN WHICH CASE IS PENDING Nebraska	DIVISION OFFICE Omaha	NAME OF JUDGE Timothy J. Mahoney

RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE 01/31/2011	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Michael J. Whaley, #19390	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE: KEITH ROBERT FEILMEIER, JUDITH ELIZABETH FEILMEIER, Debtors.	CASE NO. BK10-80147 CHAPTER 7
GABRIEL TECHNOLOGIES CORPORATION, GABRIEL TECHNOLOGIES, LLC., Plaintiffs, v. KEITH ROBERT FEILMEIER, JUDITH ELIZABETH FEILMEIER, and RICHARD D. MYERS, Chapter 7 Trustee, Defendants.	ADV. CASE NO.

COMPLAINT TO DETERMINE THE OWNERSHIP OF AN ASSET LISTED IN THE DEBTORS' BANKRUPTCY SCHEDULES

Come now the Plaintiffs, Gabriel Technologies Corporation (hereinafter referred as "GT Corp.") and Gabriel Technologies, LLC. (hereinafter referred as "GT LLC.") and for their Cause of Action against the Defendants, Keith Robert Feilmeier and Judith Elizabeth Feilmeier (hereinafter referred as the "Feilmeiers") and the Chapter 7 Trustee Richard D. Myers (hereinafter referred as the "Myers"), and each one of them, each state and allege as follows:

1. GT Corp. is a Delaware corporation with its principal place of business in Omaha, Douglas County, Nebraska.

2. GT LLC. is a Nebraska limited liability company with its principal place of business in Omaha, Douglas County, Nebraska.

3. The Feilmeiers were at all times pertinent hereto residents of Omaha, Douglas County, Nebraska.

4. Myers was at all times pertinent hereto appointed the Chapter 7 Trustee on or about October 29, 2010.

5. This Court has jurisdiction over this adversary proceeding, pursuant to the provisions of *28 U.S.C. 1334*; *28 U.S.C. 157(d)(2)(A)* and *Bank. Rule 7001*.

6. GT Corp. and GT LLC. each contend that this is a core proceeding under *28 U.S.C. 157(b)(2)(A)*.

7. The Feilmeiers originally filed this bankruptcy proceeding as a Chapter 13 on or about February 20, 2010. On or about, October 29, 2010, the Feilmeiers converted their Chapter 13 case to Chapter 7.

8. The defendant, Keith Feilmeier (hereinafter sometimes referred as "Keith") was a prior officer and director of GT Corp.

9. Keith was a prior managing member of GT LLC.

10. Prior to the filing of the Feilmeiers' Chapter 13 bankruptcy proceeding in this Court, GT Corp. filed a lawsuit against the Feilmeiers and several other defendants in the *District Court of Douglas County, Nebraska* at *Doc. 1092 and 798* (hereinafter referred as the "State Court Litigation"). GT LLC. joined this matter as an additional plaintiff when the Complaint was amended. That attached hereto marked Exhibit "A" and incorporated herein by this reference is a copy of the Amended Complaint filed in

the State Court Litigation. GT Corp. and GT. LLC incorporate all of the allegations plead in the Amended Complaint attached as Exhibit "A" as part of this litigation.

11. Prior to the filing of the Feilmeiers' Chapter 13 bankruptcy proceeding in this Court, GT Corp. was a named defendant in a lawsuit filed by Hugh A. Hawkins in the *United States District Court for the District of Nebraska*. Keith was also named a defendant in that litigation as well. As part of a settlement agreement with Mr. Hawkins, Mr. Hawkins assigned his claims against Feilmeier to GT Corp. This litigation has now been transferred to this Court (hereinafter referred as the "Federal Court Litigation"). That attached hereto marked Exhibit "B" and incorporated herein is a copy of the Complaint filed in the Federal Court Litigation. GT Corp. incorporates all of the allegations plead its Federal Court Litigation as part of this litigation.

12. Prior to the filing of the Feilmeiers' Chapter 13 bankruptcy proceeding, GT Corp. filed a lawsuit against Qualcomm, Inc. in the *United States District Court for the Southern District of California* at *Civil No. 08-CV-1992* (hereinafter referred as the "IP Litigation.") In that case, GT Corp. is seeking a judgment against Qualcomm, Inc. for alleged intellectual property violations.

13. The Feilmeiers have listed on their Schedules (Filing # 10) that they own a 3.125% interest in any recovery which GT Corp. may recover against Qualcomm, Inc. in the IP Litigation (hereinafter referred as the " IP Claim").

14. At this time, Myers has not made a decision as to whether he will claim any or all of the Feilmeiers' assets, including the IP Claim.

15. GT Corp. and GT LLC. contend that the Feilmeiers do not own an interest in the IP Litigation. As a result, the Feilmeiers and Meyer do not have a right in the IP Litigation and the same is not an asset of this Chapter 7 bankruptcy estate.

16. GT Corp. and GT LLC. each contend that the Feilmeiers do not have an interest in the IP Litigation because any alleged right was obtained by the Feilmeiers through improper means. Specifically GT Corp. and GT LLC. each contend that:

(a) The Feilmeiers paid no consideration to GT Corp. for their alleged interest in the IP Litigation; and

(b) If Keith gave himself an interest in the IP Litigation, he did it at a time when he did not have the corporate authority to do so; and

(c) If Keith gave himself an interest in the IP Litigation, his acts in doing so, violated his fiduciary duties owed to GT. Corp. as an officer and director.

WHEREFORE, GT Corp. and GT. LLC pray this Court for a judgment from this Court finding that the Feilmeiers do not own an interest in the IP Litigation and thus, the IP Claim is not an asset of the Feilmeiers' Chapter 7 bankruptcy and such other and further relief as the Court deems just and proper.

GABRIEL TECHNOLOGIES CORPORATION and
GABRIEL TECHNOLOGIES, L.L.C., Plaintiffs

By /s/ Michael J. Whaley

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